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Melissa A. Weare 6/20/03

PATENT

CM1137C2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: David Victor Cann : Group Art Unit:

Serial No.: To Be Determined : Examiner:

Filed: June 20, 2003 :

For: **A Toothbrush with Elastomer Filled Flexible Head**

**STATEMENT UNDER 37 C.F.R §1.608(a) IN SUPPORT OF
REQUEST FOR INTERFERENCE UNDER 37 C.F.R. §1.607**

Mail Stop Patent Application
P.O. Box 1450
Commissioner of Patents
Alexandria, VA 22313-1450

Dear Sir:

Submitted herewith is a Request for Interference Pursuant to 37 C.F.R. §1.607, requesting that an interference be declared between the present application and the Hohlbein U. S. Patents Nos. 6,314,606 and 6,442,787.

The present application is a continuation of U.S. Application Serial No. 10/132,976 filed April 24, 2002, which is a continuation of U. S. Application Serial No. 09/101,918 filed August 20, 1998, which is a 371 national stage filing of PCT/US97/00968 filed January 17, 1997, which claims priority of United Kingdom Application No. 9601012.9 filed January 18, 1996. The present application therefore has an effective filing date as defined in 37 C.F.R. 1.601(g) of January 18, 1996. The effective filing date of January 18, 1996 is less than three

months after the earliest alleged effective filing dates of the Hohlbein patents, i.e., December 29, 1995.

The undersigned attorney of record submits that in the interference as requested, there is a basis upon which the Applicant is entitled to a judgment relative to the patentee. The declaration of an interference as requested in the accompanying Request for Interference Pursuant to 37 C.F.R. §1.607, is therefore believed warranted and is respectfully requested.

A similar request was made in parent Application Serial No. 10/132,976 but, to Applicant's knowledge, had not been acted upon in the parent application.

Respectfully submitted,


Holly D. Kozlowski
Registration No. 30,468
DINSMORE & SHOHL LLP
1900 Chemed Center
255 E. Fifth Street
Cincinnati, OH 45202
(513) 977-8568

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Melissa C. Tschirhart

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: David Victor Cann : Group Art Unit:

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For: **A Toothbrush with Elastomer Filled Flexible Head**

REQUEST FOR
INTERFERENCE PURSUANT TO 37 C.F.R. §1.607

Mail Stop Patent Application
P.O. Box 1450
Commissioner of Patents
Alexandria, VA 22313-1450

Dear Sir:

Applicant presents this Request for Interference Pursuant to 37 C.F.R. §1.607 and respectfully requests that an interference be declared between the present application and the Hohlbein U.S. Patents Nos. 6,314,606 and 6,442,787. A copy of the Hohlbein U.S. Patent No. 6,314,606 is included in Appendix A, a copy of the Hohlbein U.S. Patent No. 6,442,787 is included in Appendix B, and the information required by 37 C.F.R. §1.607(a) is set forth herein.

Claims 1-30 are pending in this application. Claims 9-13, claims 14 and 15 and claims 16-26 claim exactly the same subject matter as claims 1-5, claim 6 and claims 8-18,

respectively, of the Hohlbein U.S. Patent No. 6,314,606. Claims 27-30 claim exactly the same subject matter as claims 9-12, respectively, of the Hohlbein U.S. Patent No. 6,442,787. Claims 9-30 correspond identically to claims 9-30 presented in an Amendment and Request for Interference filed by Certificate of Express Mail on November 12, 2002, in parent Application Serial No. 10/132,976 filed April 24, 2002.

I. Identification of the Patents Claiming Subject Matter Which Interferes With the Cann Application (37 C.F.R. §1.607(a)(1))

The patents claiming subject matter which interferes with the subject matter set forth and claimed in the present application of Cann (hereinafter “the Cann application”) are (1) U.S. Patent No. 6,314,606 which issued on November 13, 2001 with claims 1-18, naming Douglas J. Hohlbein as inventor and Colgate-Palmolive Company as assignee, for “Contouring Toothbrush Head” (hereinafter “the Hohlbein ‘606 patent”) and (2) U.S. Patent No. 6,442,787 which issued on September 3, 2002 with claims 1-12 naming Douglas J. Hohlbein as inventor and Colgate-Palmolive Company as assignee, for “Contouring Toothbrush Head” (hereinafter “the Hohlbein ‘787 patent”).

The Hohlbein ‘606 patent issued from U.S. Application Serial No. 09/422,953 filed October 22, 1999 and is a continuation of Application No. 09/351,178, filed on July 12, 1999, now U.S. Patent No. 6,073,299, which is a continuation of Application No. 09/090,331, filed on May 29, 1998, now U.S. Patent No. 5,991,958, which is a continuation of Application No. 08/762,783, filed on December 10, 1996, now U.S. Patent No. 5,758,383. The Holbein '606 patent claims priority to U.S. provisional Application No. 60/008,734 filed December 29, 1995.

The Hohlbein ‘787 patent issued from U.S. Application Serial No. 09/897,606, filed July 3, 2001, and is a continuation of Application No. 09/422,953, filed on October 22, 1999, now U. S. Patent No. 6,314,606, which is a continuation of Application No. 09/351,178, filed on July 12, 1999, now U.S. Patent No. 6,073,299, which is a continuation of Application No.

09/090,331, filed on May 29, 1998, now U.S. Patent No. 5,991,958, which is a continuation of Application No. 08/762,783, filed on December 10, 1996, now U.S. Patent No. 5,758,383. The Holbein '787 patent claims priority to U.S. provisional Application No. 60/008,734 filed December 29, 1995.

II. Presentation of Four Proposed Counts (37 C.F.R. §1.607(a)(2))

The following four counts are proposed for the requested interference:

Proposed Count 1:

A toothbrush comprising a handle and an articulated head, said head having at least two sections to thereby define a composite head having an upper surface and a lower surface, said at least two sections having respective longitudinally spaced ends facing each other, each of said head sections having a plurality of bristles extending from the lower surface thereof, said facing ends having an elastomeric material therebetween, said handle having a molded-in channel that may be used to introduce elastomeric material into said head.

Proposed Count 2:

A toothbrush comprising a handle and an articulated head, said head having at least two sections to thereby define a composite head having an upper surface and a lower surface, said at least two sections having respective longitudinally spaced ends facing each other, each of said head sections having a plurality of tufts of bristles extending from the lower surface thereof, said facing ends having an elastomeric material therebetween, wherein the length of the elastomer between the facing ends of said two head sections varies, said length being measured along the toothbrush longitudinal axis.

Proposed Count 3:

A method of producing a toothbrush comprising: molding, of one material, a toothbrush handle aligned with and integrally joined to a composite head, the composite head including at least a first and a second section, the composite head having an upper and lower

surface, the first section and the second section having respective longitudinally spaced ends facing each other, the handle having a molded in channel that may be used to introduce elastomeric material into said head; injecting an elastomer into the molded in channel; and tufting both the first section and the second section each with a plurality of tufts.

Proposed Count 4:

A method of producing a toothbrush comprising: molding, of one material, a toothbrush handle aligned with and integrally joined to a composite head, the composite head including at least a first and a second section, the composite head having an upper and lower surface, the first section and the second section having respective longitudinally spaced ends facing each other, the handle having a molded in channel that may be used to introduce elastomeric material into said head; injecting an elastomer between said facing ends of said first and second sections; and tufting both the first section and the second section each with a plurality of tufts.

A copy of the proposed counts is also set forth in Appendix C.

III. Identification of Claims of the Hohlbein '606 Patent and the Hohlbein '787 Patent Which Correspond to the Proposed Counts (37 C.F.R. §1.607(a)(3) and (a)(4))

Claims 1-7 of the Hohlbein '606 patent are believed to correspond to the proposed Count 1. Claims 8-13 of the Hohlbein '606 patent are believed to correspond to the proposed Count 2. Claims 14-17 of the Hohlbein '606 patent are believed to correspond to the proposed Count 3. Claim 18 of the Hohlbein '606 patent is believed to correspond to the proposed Count 4. Claims 9-11 of the Hohlbein '787 are believed to correspond to the proposed Count 4. Finally, claim 12 of the Hohlbein '787 patent is believed to correspond to the proposed Count 1.

Claim 1 of the Hohlbein '606 patent corresponds exactly to the proposed Count 1.

Claims 2-7 of the Hohlbein '606 patent do not correspond exactly to the proposed Count 1.

Specifically, claims 2-7 depend from claim 1 and further recite, respectively, that the handle includes a grip, and elastomeric material may be introduced into said molded-in channel though said grip (claim 2); at least some of the tufts extending from the bottom surface of one of said head sections are of uniformly different length (claim 3); the free ends of at least some of the tufts extending from one of said head sections form a slant with respect to the lower surface of said head section (claim 4); the elastomer between the facing ends forms at least one wing portion along the longitudinal axis of the upper surface of the head (claim 5); the elastomer between the facing ends is generally T shaped (claim 6); and said at least two head sections are normally at an angle relative to each other (claim 7).

However, these literal differences do not prevent claims 2-7 of the Hohlbein '606 patent from corresponding to Count 1 as the limitations defined by claims 2-7 do not render these claims patentably distinct from the toothbrush defined by Count 1. Thus, claims 2-7 of the Hohlbein '606 patent correspond to the proposed Count 1.

Claim 8-10 of the Hohlbein '606 patent do not correspond exactly to the proposed Count 2. Specifically, claim 8 of the Hohlbein '606 patent recites all of the limitations of Count 2 and additionally recites that at least some of the tufts extending from the bottom surface of one of said head sections are of uniformly different lengths and at least some of the free ends of the tufts extending from one of said head sections form a slant with respect to the lower surface of said head section. Claim 9 is dependent upon claim 8 and recites that the elastomer between the facing ends forms at least one wing portion along the longitudinal axis of the upper surface of the head. Claim 10 is dependent upon claim 8 and recites that the elastomer between the facing ends is generally T shaped.

However, these literal differences do not prevent claims 8-10 of the Hohlbein '606 patent from corresponding to Count 2 as the limitations of claims 8-10 do not render these

claims patentably distinct from the toothbrush defined by Count 2. Thus, claims 8-10 of the Hohlbein '606 patent correspond to the proposed Count 2.

Claim 11 of the Hohlbein '606 patent corresponds exactly to the proposed Count 2.

Claims 12 and 13 of the Hohlbein '606 patent do not correspond exactly to the proposed Count 2. Specifically, claim 12 is dependent upon claim 11 and further recites that the elastomer between the facing ends forms at least one wing portion along the longitudinal axis of the upper surface of the head. Claim 13 also depends upon claim 11 and further recites that the elastomer between the facing ends is generally T shaped.

However, these literal differences do not prevent claims 12 and 13 of the Hohlbein '606 patent from corresponding to Count 2 as the limitations of claims 12 and 13 do not render these claims patentably distinct from the toothbrush defined by Count 2. Thus, claims 12 and 13 of the Holbein '606 patent correspond to the proposed Count 2.

Claim 14 of the Hohlbein '606 patent corresponds exactly to the proposed Count 3.

Claims 15-17 of the Hohlbein '606 patent do not correspond exactly to the proposed Count 3. Specifically, claims 15-17 depend upon claim 14 and further recite, respectively, that the tufts extending from one of said head sections are of uniformly different lengths (claim 15); the length of the elastomer between the facing ends of said two head sections varies, said length being measured along the toothbrush longitudinal axis (claim 16); and the step of tufting both the first section and the second section is performed after the step of injecting an elastomer into the molded in channel (claim 17).

However, these literal differences do not prevent claims 15-17 of the Hohlbein '606 patent from corresponding to Count 3 as the limitations of claims 15-17 do not render these claims patentably distinct from the method of producing a toothbrush defined by Count 3. Thus, claims 15-17 of the Hohlbein '606 patent correspond to the proposed Count 3.

Claim 18 of the Hohlbein '606 patent does not correspond exactly to the proposed Count 4. Specifically, claim 18 of the Hohlbein '606 patent recites all of the limitations of Count 4 and additionally recites that the length of the elastomer between the facing ends of said two head sections varies, said length being measured along the toothbrush longitudinal axis.

However, this literal difference does not prevent claim 18 of the Hohlbein '606 patent from corresponding to Count 4 as the additional limitation does not render claim 18 patentably distinct from the method of producing a toothbrush defined by Count 4. Thus, claim 18 of the Hohlbein '606 patent corresponds to the proposed Count 4.

Claim 9 of the Hohlbein '787 patent corresponds exactly to the proposed Count 4. Claims 10 and 11 of the Hohlbein '787 patent do not correspond exactly to the proposed Count 4. Specifically, claims 10 and 11 depend upon claim 9 and further recite, respectively, that the tufts are organized as rows substantially transverse to the longitudinal axis of the toothbrush handle, and the rows of tufts extending from one of said head sections are of uniformly different lengths (claim 10); and the step of tufting both the first section and the second section is performed after the step of injecting an elastomer between said facing ends of said first and second sections (claim 11).

However, these literal differences do not prevent claims 10 and 11 of the Hohlbein '787 patent from corresponding to Count 4 as the limitations of claims 10 and 11 do not render these claims patentably distinct from the method of producing a toothbrush as defined by Count 4. Thus, claims 10 and 11 of the Hohlbein '787 patent correspond to the proposed Count 4.

Claim 12 of the Hohlbein '787 patent does not correspond exactly to the proposed Count 1. Specifically, claim 12 of the Hohlbein '787 patent recites the limitations of Count 1

and additionally recites that the length of the elastomer between the facing ends of said two head sections varies, said length being measured along the toothbrush longitudinal axis.

However, this literal difference does not prevent claim 12 of the Hohlbein '787 patent from corresponding to Count 1 as the limitation does not render claim 12 patentably distinct from Count 1. Thus, claim 12 of the Hohlbein '787 patent corresponds to the proposed Count 1.

IV. Claims of the Cann Application Which Correspond to the Proposed Counts (37 C.F.R. §1.607(a)(4))

Claims 9-15 and 30 are believed to correspond to the proposed Count 1. Claims 16-21 are believed to correspond to the proposed Count 2. Claims 22-25 are believed to correspond to the proposed Count 3. Finally, claims 26-29 are believed to correspond to the proposed Count 4.

Claim 9 of the Cann application corresponds exactly to the proposed Count 1. Claims 10-15 of the Cann application do not correspond exactly to the proposed Count 1. Specifically, claims 10-15 depend from claim 9 and further recite, respectively, that the handle includes a grip, and elastomeric material may be introduced into said molded-in channel through said grip (claim 10); at least some of the tufts extending from the bottom surface of one of said head sections are of uniformly different length (claim 11); the free ends of at least some of the tufts extending from one of said head sections form a slant with respect to the lower surface of said head section (claim 12); the elastomer between the facing ends forms at least one wing portion along the longitudinal axis of the upper surface of the head (claim 13); and the elastomer between the facing ends is generally T shaped (claims 14 and 15).

However, these literal differences do not prevent claims 10-15 of the Cann application from corresponding to Count 1 as the limitations defined by claims 10-15 do not render these

claims patentably distinct from the toothbrush defined by Count 1. Thus, claims 10-15 of the Cann application correspond to the proposed Count 1.

Claims 16-18 of the Cann application do not correspond exactly to the proposed Count 2. Specifically, claim 16 of the Cann application recites all of the limitations of Count 2 and additionally recites that at least some of the tufts extending from the bottom surface of one of said head sections are of uniformly different lengths and at least some of the free ends of the tufts extending from one of said head sections form a slant with respect to the lower surface of said head section. Claim 17 is dependent upon claim 16 and recites that the elastomer between the facing ends forms at least one wing portion along the longitudinal axis of the upper surface of the head. Claim 18 is dependent upon claim 16 and recites that the elastomer between the facing ends is generally T shaped.

However, these literal differences do not prevent claims 16-18 of the Cann application from corresponding to Count 2 as the limitations of claims 16-18 do not render these claims patentably distinct from the toothbrush defined by Count 2. Thus, claims 16-18 of the Cann application correspond to the proposed Count 2.

Claim 19 of the Cann application corresponds exactly to the proposed Count 2. Claims 20 and 21 of the Cann application do not correspond exactly to the proposed Count 2. Specifically, claim 20 is dependent upon claim 19 and further recites that the elastomer between the facing ends forms at least one wing portion along the longitudinal axis of the upper surface of the head. Claim 21 also depends upon claim 19 and recites that the elastomer between the facing ends is generally T shaped.

However, these literal differences do not prevent claims 20 and 21 of the Cann application from corresponding to Count 2 as the limitations of claims 20 and 21 do not render these claims patentably distinct from the toothbrush defined by Count 2. Thus, claims 20 and 21 of the Cann application correspond to the proposed Count 2.

Claim 22 of the Cann application corresponds exactly to the proposed Count 3.

Claims 23-25 of the Cann application do not correspond exactly to the proposed Count 3.

Specifically, claims 23-25 depend upon claim 22 and further recite, respectively, that the tufts extending from one of said head sections are of uniformly different lengths (claim 23); the length of the elastomer between the facing ends of said two head sections varies, said length being measured along the toothbrush longitudinal axis (claim 24); and the step of tufting both the first section and the second section is performed after the step of injecting an elastomer into the molded in channel (claim 25).

However, these literal differences do not prevent claims 23-25 of the Cann application from corresponding to Count 3 as the limitations of claims 23-25 do not render these claims patentably distinct from the method of producing a toothbrush defined by Count 3. Thus, claims 23-25 of the Cann application correspond to the proposed Count 3.

Claim 26 of the Cann application does not correspond exactly to the proposed Count 4. Specifically, claim 26 of the Cann application recites all of the limitations of Count 4 and additionally recites that the length of the elastomer between the facing ends of said two head sections varies, said length being measured along the toothbrush longitudinal axis.

However, this literal difference does not prevent claim 26 of the Cann application from corresponding to Count 4 as the additional limitation does not render claim 26 patentably distinct from the method of producing a toothbrush defined by Count 4. Thus, claim 26 of the Cann application corresponds to the proposed Count 4.

Claim 27 of the Cann application corresponds exactly to the proposed Count 4.

Claims 28 and 29 of the Cann application do not correspond exactly to the proposed Count 4. Specifically, claims 28 and 29 depend upon claim 27 and further recite, respectively, that the tufts are organized as rows substantially transverse to the longitudinal axis of the toothbrush handle, and the rows of tufts extending from one of said head sections are of uniformly

different lengths (claim 28); and the step of tufting both the first section and the second section is performed after the step of injecting an elastomer between said facing ends of said first and second sections (claim 29).

However, these literal differences do not prevent claims 28 and 29 of the Cann application from corresponding to Count 4 as the limitations of claims 28 and 29 do not render these claims patentably distinct from the method of producing a toothbrush as defined by Count 4. Thus, claims 28 and 29 of the Cann application correspond to the proposed Count 4.

Claim 30 of the Cann application does not correspond exactly to the proposed Count 1. Specifically, claim 30 of the Cann application recites the limitations of Count 1 and additionally recites that the length of the elastomer between the facing ends of said two head sections varies, said length being measured along the toothbrush longitudinal axis.

However, this literal difference does not prevent claim 30 of the Cann application from corresponding to Count 1 as the limitation does not render claim 30 patentably distinct from Count 1. Thus, claim 30 of the Cann application corresponds to the proposed Count 1.

**V. Application of the Terms of the Cann Claims Corresponding to the Proposed Counts to the Cann Application Disclosure
(37 C.F.R. §1.607(a)(5))**

The attached Appendix D provides an element-by-element recitation of claims 9-30 and a corresponding indication of the passages in the originally filed Cann application where, at the very least, these claims find support.

**VI. The Requirements of 35 U.S.C. §135(b) are Satisfied
(37 C.F.R. 1.607(a)(6))**

35 U.S.C. § 135(b) states that "A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted." Claims 9-30 correspond identically to claims 9-30 added by Applicant in

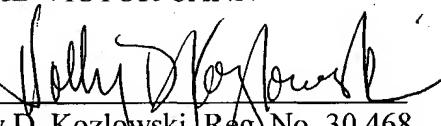
parent Application Serial No. 10/132,976 in the Amendment filed by Certificate of Express Mail on November 12, 2002. Therefore, the claims have been copied within one year of the grants of the Hohlbein '606 patent claims (Nov. 13, 2001) and the Hohlbein '787 patent claims (Sept. 3, 2002), whereby 35 U.S.C. §135(b) is satisfied. See MPEP § 2307.

VII. Conclusion

A Statement Under 37 C.F.R. §1.608(a) is submitted herewith. Accordingly, pursuant to the provisions of 37 C.F.R. §1.607; and in view of the foregoing remarks, and the accompanying Appendices, Applicant respectfully requests that an interference be declared between claims 9-30 of the present application and claims 1-18 of the Hohlbein U.S. Patent No. 6,314,606 and claims 9-12 of the Hohlbein U.S. Patent No. 6,442,787.

Respectfully submitted,

DAVID VICTOR CANN

By: 
Holly D. Kozlowski, Reg. No. 30,468
Attorney for Applicant
DINSMORE & SHOHL LLP
1900 Chemed Center
255 E. Fifth Street
Cincinnati, OH 45202
(513) 977-8568

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915562